

AMENDED IN ASSEMBLY MARCH 17, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 1684

Introduced by Assembly Member Mark Stone

January 20, 2016

An act to amend Section 52 of the Civil Code, and to amend Section 12930 of the Government Code, relating to civil actions.

LEGISLATIVE COUNSEL'S DIGEST

AB 1684, as amended, Mark Stone. Civil actions: human trafficking.

Existing law authorizes a victim of human trafficking, as defined, to bring a civil action for actual damages, compensatory damages, punitive damages, injunctive relief, any combination of those, or any other appropriate relief, as specified. Existing law, whenever there is reasonable cause to believe that a person is engaged in conduct of resistance to the full enjoyment of certain civil rights, also authorizes the Attorney General, any district attorney or city attorney, or any person aggrieved by the conduct to bring a civil action in the appropriate court, law authorizes the Department of Fair Employment and Housing to receive, investigate, conciliate, mediate, and prosecute complaints alleging certain unlawful practices, as specified.

This bill would further authorize the Attorney General, a district attorney, a city attorney, or the Department of Fair Employment and Housing to bring a civil action for department to receive, investigate, conciliate, mediate, and prosecute complaints alleging, and bring civil actions for, a victim of human trafficking, as described above. The bill would provide that a person that commits human trafficking is also liable for a \$25,000 civil penalty, regardless of whether the action is brought by the victim, the Attorney General, a district attorney, or a

city attorney, and would require the civil penalty, and any damages awarded in a civil action brought by the department, *department* to be awarded to the victim of human trafficking. The bill would also authorize the department to receive, investigate, conciliate, mediate, and prosecute complaints alleging human trafficking.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 52 of the Civil Code is amended to read:
2 52. (a) ~~Whoever denies, aids or incites a denial, or makes any~~
3 ~~discrimination or distinction contrary to Section 51, 51.5, or 51.6,~~
4 ~~is liable for each and every offense for the actual damages, and~~
5 ~~any amount that may be determined by a jury, or a court sitting~~
6 ~~without a jury, up to a maximum of three times the amount of~~
7 ~~actual damage but in no case less than four thousand dollars~~
8 ~~(\$4,000), and any attorney's fees that may be determined by the~~
9 ~~court in addition thereto, suffered by any person denied the rights~~
10 ~~provided in Section 51, 51.5, or 51.6.~~
11 (b) ~~Whoever denies the right provided by Section 51.7 or 51.9,~~
12 ~~or aids, incites, or conspires in that denial, or whoever violates~~
13 ~~Section 236.1 of the Penal Code, is liable for each and every~~
14 ~~offense for the actual damages suffered by any person denied that~~
15 ~~right or harmed by that violation and, in addition, the following:~~
16 (1) ~~An amount to be determined by a jury, or a court sitting~~
17 ~~without a jury, for exemplary damages.~~
18 (2) ~~A civil penalty of twenty-five thousand dollars (\$25,000)~~
19 ~~to be awarded to the person denied the right provided by Section~~
20 ~~51.7 or harmed by a violation of Section 236.1 of the Penal Code~~
21 ~~in any action brought by the person denied the right or harmed by~~
22 ~~the violation, or by the Attorney General, a district attorney, or a~~
23 ~~city attorney. An action for that penalty brought pursuant to Section~~
24 ~~51.7 shall be commenced within three years of the alleged practice.~~
25 (3) ~~Attorney's fees as may be determined by the court.~~
26 (e) ~~Whenever there is reasonable cause to believe that any person~~
27 ~~or group of persons is engaged in harmful conduct, or conduct of~~
28 ~~resistance to the full enjoyment of any of the rights, described in~~
29 ~~this section, and that conduct is of that nature and is intended to~~
30 ~~cause that harm or deny the full exercise of those rights, the~~

1 ~~Attorney General, any district attorney or city attorney, or any~~
2 ~~person aggrieved by the conduct may bring a civil action in the~~
3 ~~appropriate court by filing with it a complaint. The complaint shall~~
4 ~~contain the following:~~

5 ~~(1) The signature of the officer, or, in his or her absence, the~~
6 ~~individual acting on behalf of the officer, or the signature of the~~
7 ~~person aggrieved.~~

8 ~~(2) The facts pertaining to the conduct.~~

9 ~~(3) A request for preventive relief, including an application for~~
10 ~~a permanent or temporary injunction, restraining order, or other~~
11 ~~order against the person or persons responsible for the conduct, as~~
12 ~~the complainant deems necessary to prevent the harm, or ensure~~
13 ~~the full enjoyment of the rights, described in this section.~~

14 ~~(d) Whenever an action has been commenced in any court~~
15 ~~seeking relief from the denial of equal protection of the laws under~~
16 ~~the Fourteenth Amendment to the Constitution of the United States~~
17 ~~on account of race, color, religion, sex, national origin, or disability,~~
18 ~~the Attorney General or any district attorney or city attorney for~~
19 ~~or in the name of the people of the State of California may~~
20 ~~intervene in the action upon timely application if the Attorney~~
21 ~~General or any district attorney or city attorney certifies that the~~
22 ~~case is of general public importance. In that action, the people of~~
23 ~~the State of California shall be entitled to the same relief as if it~~
24 ~~had instituted the action.~~

25 ~~(e) Actions brought pursuant to this section are independent of~~
26 ~~any other actions, remedies, or procedures that may be available~~
27 ~~to an aggrieved party pursuant to any other law.~~

28 ~~(f) Any person claiming to be aggrieved by an alleged unlawful~~
29 ~~practice in violation of Section 51 or 51.7 may also file a verified~~
30 ~~complaint with the Department of Fair Employment and Housing~~
31 ~~pursuant to Section 12948 of the Government Code.~~

32 ~~(g) This section does not require any construction, alteration,~~
33 ~~repair, structural or otherwise, or modification of any sort~~
34 ~~whatsoever, beyond that construction, alteration, repair, or~~
35 ~~modification that is otherwise required by other provisions of law,~~
36 ~~to any new or existing establishment, facility, building,~~
37 ~~improvement, or any other structure, nor does this section augment,~~
38 ~~restrict, or alter in any way the authority of the State Architect to~~
39 ~~require construction, alteration, repair, or modifications that the~~
40 ~~State Architect otherwise possesses pursuant to other laws.~~

1 ~~(h) For the purposes of this section, “actual damages” means~~
2 ~~special and general damages. This subdivision is declaratory of~~
3 ~~existing law.~~

4 ~~(i) Subdivisions (b) to (f), inclusive, shall not be waived by~~
5 ~~contract except as provided in Section 51.7.~~

6 ~~SEC. 2.~~

7 ~~SECTION 1.~~ Section 12930 of the Government Code is
8 amended to read:

9 12930. The department shall have the following functions,
10 powers, and duties:

11 (a) To establish and maintain a principal office and any other
12 offices within the state as are necessary to carry out the purposes
13 of this part.

14 (b) To meet and function at any place within the state.

15 (c) To appoint attorneys, investigators, conciliators, mediators,
16 and other employees as it may deem necessary, fix their
17 compensation within the limitations provided by law, and prescribe
18 their duties.

19 (d) To obtain upon request and utilize the services of all
20 governmental departments and agencies and, in addition, with
21 respect to housing discrimination, of conciliation councils.

22 (e) To adopt, promulgate, amend, and rescind suitable procedural
23 rules and regulations to carry out the investigation, prosecution,
24 and dispute resolution functions and duties of the department
25 pursuant to this part.

26 (f) (1) To receive, investigate, conciliate, mediate, and prosecute
27 complaints alleging practices made unlawful pursuant to Chapter
28 6 (commencing with Section 12940).

29 (2) To receive, investigate, conciliate, mediate, and prosecute
30 complaints alleging a violation of Section 51, 51.5, 51.7, 54, 54.1,
31 or 54.2 of the Civil Code. The remedies and procedures of this
32 part shall be independent of any other remedy or procedure that
33 might apply.

34 (3) To receive, investigate, conciliate, mediate, and prosecute
35 complaints alleging, and to bring civil actions pursuant to Section
36 52.5 of the Civil Code for, a violation of Section 236.1 of the Penal
37 Code. Damages awarded in any action brought by the department
38 pursuant to Section 52.5 of the Civil Code shall be awarded to the
39 person harmed by the violation of Section 236.1 of the Penal Code.
40 Costs and attorney’s fees awarded in any action brought by the

1 department pursuant to Section 52.5 of the Civil Code shall be
2 awarded to the department. The remedies and procedures of this
3 part shall be independent of any other remedy or procedure that
4 might apply.

5 (g) In connection with any matter under investigation or in
6 question before the department pursuant to a complaint filed under
7 Section 12960, 12961, or 12980:

8 (1) To issue subpoenas to require the attendance and testimony
9 of witnesses and the production of books, records, documents, and
10 physical materials.

11 (2) To administer oaths, examine witnesses under oath and take
12 evidence, and take depositions and affidavits.

13 (3) To issue written interrogatories.

14 (4) To request the production for inspection and copying of
15 books, records, documents, and physical materials.

16 (5) To petition the superior courts to compel the appearance
17 and testimony of witnesses, the production of books, records,
18 documents, and physical materials, and the answering of
19 interrogatories.

20 (h) To bring civil actions pursuant to Section 12965 or 12981
21 and to prosecute those civil actions before state and federal trial
22 courts.

23 (i) To issue those publications and those results of investigations
24 and research as in its judgment will tend to promote good will and
25 minimize or eliminate discrimination in employment on the bases
26 enumerated in this part and discrimination in housing because of
27 race, religious creed, color, sex, gender, gender identity, gender
28 expression, marital status, national origin, ancestry, familial status,
29 disability, genetic information, or sexual orientation.

30 (j) To investigate, approve, certify, decertify, monitor, and
31 enforce nondiscrimination programs proposed by a contractor to
32 be engaged in pursuant to Section 12990.

33 (k) To render annually to the Governor and to the Legislature
34 a written report of its activities and of its recommendations.

35 (l) To conduct mediations at any time after a complaint is filed
36 pursuant to Section 12960, 12961, or 12980. The department may
37 end mediation at any time.

38 (m) The following shall apply with respect to any accusation
39 pending before the former Fair Employment and Housing
40 Commission on or after January 1, 2013:

1 (1) If an accusation issued under former Section 12965 includes
2 a prayer either for damages for emotional injuries as a component
3 of actual damages, or for administrative fines, or both, or if an
4 accusation is amended for the purpose of adding a prayer either
5 for damages for emotional injuries as a component of actual
6 damages, or for administrative fines, or both, with the consent of
7 the party accused of engaging in unlawful practices, the department
8 may withdraw an accusation and bring a civil action in superior
9 court.

10 (2) If an accusation was issued under former Section 12981,
11 with the consent of the aggrieved party filing the complaint an
12 aggrieved person on whose behalf a complaint is filed, or the party
13 accused of engaging in unlawful practices, the department may
14 withdraw the accusation and bring a civil action in superior court.

15 (3) Where removal to court is not feasible, the department shall
16 retain the services of the Office of Administrative Hearings to
17 adjudicate the administrative action pursuant to Sections 11370.3
18 and 11502.

19 (n) On any Section 1094.5 Code of Civil Procedure challenge
20 to a decision of the former Fair Employment and Housing
21 Commission pending on or after January 1, 2013, the director or
22 his or her designee shall consult with the Attorney General
23 regarding the defense of that writ petition.